LANDLORD AND TENANT—EVICTION BY MILITARY AUTHORITY.—The defendant entered into the possession of certain premises under a three-year lease dating from June 24, 1915. In May, 1917, the premises were occupied by military authorities acting under the DEFENSE OF THE REALM ACT. They remained in possession during the remainder of the term. The tenant refused to pay any rent after May, 1917. In an action by the landlord, the court *held* that the defendant was liable for the rent and resigned him to his claim for compensation from the War Losses Commission. *Whitehall Court Ltd.* v. *Ellinger* (Nov., 1919), 89 L. J. (K. B.) 126.

The case is clearly distinguishable from eviction by act of the landlord. It bears some resemblance, however, to an eviction by title paramount, the legal effect of which is to suspend the rent during the time that the tenant is deprived of the possession. *Marsh* v. *Butterworth,* 4 Mich. 574; *George* v. *Putney,* 4 Cush. 351. But it seems that it has been expressly excluded from that title. TIFFANY, LANDLORD AND TENANT, §186c. Total failure of consideration has been given as the reason for the suspension of rent in the case of eviction by title paramount. *Russell* v. *Fabyan,* 28 N. Hamp. 543. It would seem that the same reason ought to apply to the principal case, although an opposite result is reached. And the same difficulty is to be found in cases where the tenant has been deprived of possession as a result of condemnation under the power of eminent domain. In these cases, the tenant is generally held liable for the payment of rent. *Folts* v. *Huntley,* 7 Wend. 210; but, *contra, Barclay* v. *Picker,* 38 Mo. 143. The tenant has also been held liable for rent where there has been a total destruction of the premises. *Ross* v. *Overton,* 3 Call 552. Perhaps an explanation of the principal case would be that, since the premises were occupied for temporary purposes only, the lessor still held the reversion, together with the rent which was incident to it. This would not be true of cases involving eviction by title paramount. Perhaps the earliest case involving occupation by military authorities is *Paradine* v. *Jane,* Aleyn 26, where the tenant was ousted from possession by alien enemies. It was there held that the tenant was not relieved from his obligation to pay rent. The same result was reached in *Pollard* v. *Shaaffer,* 1 Dallas 210. *Contra, Bayly* v. *Lawrence,* 1 Bay 499. And see *Coogan* v. *Parker,* 2 S. Car. 255, where the landlord was allowed to recover rent on the sole ground that the tenant had resumed possession. Perhaps the cases resulting from the Civil War are more closely analogous to the principal case. The tenants were here compelled to pay rent to the Federal military authorities on penalty of forfeiture, and the landlords were not allowed to recover the rent from the tenants after the termination of the war. *Harrison* v. *Myer,* 92 U. S. 111; *Gates* v. *Goodloe,* 101 U. S. 612; *Zacharie* v. *Sproule & Co.,* 22 La. 325. Here it is doubtful whether the Federal authorities can properly be treated as alien enemies.

MARRIAGE—FRAUD JUSTIFYING ANNULMENT.—In an action to annul her marriage on the ground of fraud, plaintiff relied on the contention that she had consented to marry the defendant relying on his false and fraudulent representations that after the civil ceremony there would be a Jewish cere-

mony, and that the defendant had first postponed and then refused to go through with the religious ceremony. *Held,* plaintiff was induced to enter into a marriage with the defendant "solely by reason of his false and fraudulent misrepresentations," and that she was entitled to a decree adjudging the marriage null and void. *Rubinson* v. *Rubinson* (Sup. Ct., 1920), 181 N. Y. S. 28.

Schacter v. *Schacter* (1919), 178 N. Y. S. 212, is a decision apparently squarely the other way. The *Schacter case* is discussed *supra,* p. 243.

MUNICIPAL CORPORATIONS—CORPORATE FUNCTIONS—LIABILITY FOR TORTS OF FIREMEN.—Plaintiff's testate died as the proximate result of injuries sustained by being struck by defendant's city fire hose truck, operated negligently by defendant's servants. Upon demurrer it was *held* that plaintiff could recover. *Fowler* v. *City of Cleveland* (Ohio, 1919), 126 N. E. 72.

It is well-settled law that when a municipal corporation exercises a purely governmental function no liability attaches to it for its torts. *Hill* v. *Boston,* 122 Mass. 344. This principle is admitted everywhere except in the admiralty tribunals of the United States. *Workman* v. *New York City,* 179 U. S. 552; see 5 MICH. L. REV. 275. The courts are, nevertheless, not in accord as to what functions come within the scope of this term. Among the acts which are almost universally admitted to be public or governmental are those of its police officers (*Lafayette* v. *Timberlake,* 88 Ind. 330); of its officers and agents in the maintenance, repairing, or management of a city hall used for city business (*Snider* v. *St. Paul,* 51 Minn. 466; cf. *Little* v. *Holyoke,* 177 Mass. 114, and *Wilcox* v. *Rochester,* 190 N. Y. 137); of those engaged in the duty of erecting and maintaining public schools (*Hill* v. *Boston, supra; Kinnare* v. *Chicago,* 171 Ill. 332; *contra, Higbie* v. *N. Y. Board of Education,* 122 N. Y. App. Div. 483); and of health officers (*Webb* v. *Detroit Bd. of Health,* 116 Mich. 516). Likewise, the prevailing rule is that municipal corporations are not liable for injuries occasioned by negligence in using or keeping in repair the fire apparatus owned by them. *Wilcox* v. *Chicago,* 107 Ill. 334. With this case compare *Kies* v. *Erie,* 169 Pa. St. 598. See also the text and cases cited in DILLON, MUN. CORP. [5th Ed.], Sec. 1660. In the instant case the Ohio court expressly overruled its previous holding in *Frederick* v. *Columbus,* 58 Oh. St. 538, and, by implication, the one in *Wheeler* v. *Cincinnati,* 19 Oh. St. 19, on the ground that the act complained of was purely ministerial. It is believed that Justice Wanamaker, who concurred in the result only, is correct when he contends that the act was done in the exercise of a governmental function; and it is submitted that, while the result reached may be a salutary one from the plaintiff's viewpoint, the decision is a glaring example of judicial legislation and in conflict with the well-known principle of *stare decisis.* See also the note in 17 MICH L. REV. 503.

PARTIES—JOINDER OF DEFENDANTS IN TORT ACTIONS.—Six mining companies severally caused refuse to be discharged into a stream, thereby injuring the lands of a lower riparian owner, who joined them as defendants in